



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 10, 2011

Mr. Justin Gordon
Assistant General Counsel
Office of the Governor
P.O. Box 12428
Austin, Texas 78711

OR2011-06438

Dear Mr. Gordon:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 416011 (OOG#064-11).

The Office of the Governor (the "governor") received a request for (1) correspondence between the governor and the Electric Reliability Council of Texas ("ERCOT") during a specified time period, and (2) copies of open records requests made by media outlets during the same time period along with the responses to those requests. You state the governor has released most of the requested information. Although you take no position as to whether the submitted information is excepted under the Act, you state release of this information may implicate the interests of ERCOT. Accordingly, you state, and provide documentation showing, you notified ERCOT of the request for information and of its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from ERCOT. We have considered the submitted arguments and reviewed the submitted information.

ERCOT asserts the submitted information is confidential under section 552.101 of the Government Code in conjunction with the ERCOT Protocols and Operating Guidelines. We note ERCOT is the independent system operator established by section 39.151 of the Public Utility Regulatory Act, Title II of the Texas Utilities Code. *See* Util. Code § 39.151. Under

section 39.151, ERCOT is directly responsible and accountable to the Public Utility Commission of Texas (the "commission"). *See id.* § 39.151(d). Pursuant to section 39.151(d) of the Utilities Code, the commission has adopted Substantive Rule 25.362(e)(1)(A), which provides that "[i]nformation submitted to or collected by ERCOT pursuant to requirements of ERCOT rules shall be protected from public disclosure only if it is designated as Protected Information pursuant to ERCOT rules[.]" P.U.C. Subst. R. 25.362(e)(1)(A); *see also* Util. Code § 39.151(d) (providing that the commission shall adopt and enforce rules related to production and delivery of electricity among all market participants, and may delegate to independent organization responsibilities for establishing or enforcing such rules).

Section 552.101 of the Government Code exempts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 1.3.1 of the ERCOT Nodal Protocols states that ERCOT or any market participant may not disclose "Protected Information" received from the other to "any other Entity except as specifically permitted in this Section and in these Protocols." ERCOT Nodal Protocols § 1.3.1. Among other things, "Protected Information" is defined as follows:

Status of Resources, including Outages, limitations, or scheduled or metered Resource data. The Protected Information status of this information shall expire 60 days after the applicable Operating Day[.]

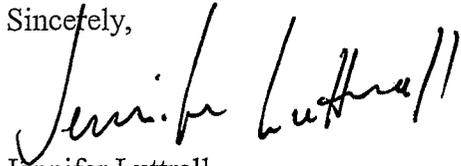
ERCOT Nodal Protocols § 1.3.1.1(c). ERCOT explains that the submitted information was provided to the governor pursuant to section 1.3.6(1)(a) of the ERCOT Nodal Protocols. *See id.* § 1.3.6(1)(a) (permitting ERCOT to disclose Protected Information to governmental officials as required by law, regulation, order, or ERCOT protocols provided ERCOT makes a reasonable effort to restrict public access to disclosed Protected Information). ERCOT states the submitted information consists of "data relating to a Generation Resource's operational status" that is Protected Information pursuant to section 1.3.1.1(c). ERCOT also states the Protected Information status of the submitted information has not expired. Based on ERCOT's representations and our review of the relevant provisions, we agree that the submitted information consists of Protected Information that must be withheld under section 552.101 in conjunction with the ERCOT Nodal Protocols. As our ruling is dispositive, we need not address ERCOT's remaining argument against disclosure.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_or1.php.

or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Luttrall". The signature is written in black ink and is positioned above the typed name.

Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 416011

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Bill Magness
Vice President, General Counsel, Corporate Secretary
ERCOT
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(w/o enclosures)